Mo. 449, 64 S. W. 99; *Buerstetta* v. *Bank*, 57 Neb. 504, 77 N. W. 1094; *Butt* v. *Carson*, 5 Okla., 160, 48 P. 182; *Montgomery* v. *Shaver*, 40 Ore. 244, 66 P. 923; *Philadelphia* v. *R. R. Co.*, 203 Pa. St. 38, 52 A. 184; *Mayo* v. *Ry Co.*, 43 S. C. 225, 21 S. E. 10; *Iron & Coal Co.* v. *Broyles*, 95 Tenn. 612, 32 S. W. 761. S. W. D.

A VENDEE'S RELIANCE ON HIS VENDOR'S REPRESENTATIONS.—How far a vendee of property can rely upon the representations of his vendor in regard to the property is interestingly presented in the case of *Abmeyer* v. *First National Bank of Horton* (1907), — Kan. —, 92 Pac. Rep. 1109. It is a general rule that a person seeking to enforce a right should not have by his negligence produced the injury complained of. The court in the principal case seems to think the question of negligence should be given little weight when fraudulent representations are in question.

The facts of this case were briefly these:

The defendant was a man with little or no knowledge of farming; Wright, his vendor, was a farmer and could estimate the quantity of corn standing in a field with reasonable certainty. Defendant bought the corn while standing and before it had matured. At the time of the sale, the vendor, Wright, represented that there were 1,300 bushels of the grain, but it turned out that there were but 431 bushels. The defendant took with him at the time a friend who also was a farmer and who inspected the corn before the deal was closed; but the evidence did not disclose whether the friend agreed with the vendor in the estimate made or not. The action was brought on a promissory note given for the purchase price which was negotiated to plaintiff, and defendant seeks to recoup his damages suffered from the alleged fraud. The trial court directed a verdict for the plaintiff on the ground that there was no evidence that plaintiff had any knowledge or notice of any fraud or claim of fraud in the inception of the note. The Supreme Court held that the trial court erred in taking the case from the jury; saying there was some evidence tending to show fraud in the inception of the note which ought to have gone to the jury; and which, if found to have been true, would have placed on plaintiff the burden of proving that it was an innocent purchaser.

In giving its opinion of the law to govern the trial court, the court in reply to plaintiffs contention that defendant was negligent in relying upon the representations of the vendor, said that one who cheats another by a falsehood, intended to deceive, was hardly in a position to say that his victim ought not to have believed him. The court based this statement expressly on the case of *Speed* v. *Holingsworth*, 54 Kan. 436, 38 Pac. Rep. 496; wherein it was said that the trend of modern decisions is toward the doctrine that one who has defrauded another cannot say in defense that the other might, with due diligence, have discovered the falsity of the representations, and that it mattered not that the other was "in some loose sense" negligent.

In the specially concurring opinion in the principal case, SMITH, J., disagreed with the majority's enunciation of the law. He contended that, if

the defendant had the same means of knowledge as the seller, he was bound to exercise his own judgment, instead of relying upon the estimate of one opposed in interest.

In *Speed* v. *Hollingsworth* (supra), the representations relied upon and upon which the court held the defendant was entitled to rely, were in regard to the acreage of a certain parcel of land, the number of acres of corn growing on the farm, as well as the rentals of certain pasture land. The court, while it did use the language set out above, expressly said that the representations then in question were of matters lying peculiarly in the knowledge of the seller. It is generally agreed that a person is justified in relying upon such representations. In such case he is not negligent. *Stewart* v. *Ranche Co.*, 128 U. S. 383; *Paine* v. *Upton*, 87 N. Y. 327; *Mitchell* v. *Zimmerman*, 4 Tex. 75. Conceding this to be the rule, do the facts in the principal case justify the general language used by the court?

There are many authorities to the effect that one claiming to recover by reason of fraud practiced upon him, must himself be free from negligence, or, as it is often put, if the falsity of the statements was apparent from the things open to his observations, or, if their falsity would have been discerned if he had used reasonable care and prudence, he cannot be deemed to have been deceived. *Long* v. *Warren*, 68 N. Y. 426; *Slaughter's Adm'r* v. *Gerson*, 13 Wall, 379; *Aetna Insurance Co.* v. *Reed*, 33 Ohio St. 283; *Marx* v. *Schwartz*, 14 Ore. 177; *Schoelkopf* v. *Leonard*, 8 Colo. 159; 14 AM. & ENG. ENC. OF LAW, pg. 115 et seq. and notes. It would seem that the rule laid down in the principal case was meant to operate in all cases, which was the occasion of the specially concurring opinion. The representations can hardly be said to have been of a character peculiarly within the knowledge of the vendor, Wright. The corn was immature when sold, and it was shown that defendant took a friend with him at the time he bought the corn. As said by SMITH, J., "he (defendant) was bound to exercise his own judgment, having full opportunity to investigate with little effort, instead of relying upon the estimate of one opposed in interest." Farther on he said, "It is a matter of common knowledge that results equally as disappointing as in this case come from cornfields that in an immature state promise as great returns as were estimated in this case. The representation was not of an existing fact, peculiarly within the knowledge of the seller, but in part, at least, an estimate of a prospective development."

In *Speed* v. *Hollingsworth* (supra), the court cited a great many cases to support the doctrine enunciated. An examniation of these cases discloses that, with the exception of one or two cases, in not one were the facts at all analogous to those in the principal case. Several involved representations in regard to the location and quantity of land; others were decided fraudulent, because of the relationship between the parties; others involved misrepresentations of the financial condition of business concerns by persons closely related with such concerns; and the rest were in regard to statements made by those who, on account of their position, had peculiar knowledge of the facts misrepresented. In the one or two in which the facts were

analogous, the courts came to a contrary conclusion, while it was said in others that the representations might be so palpably untrue that no one would be justified in relying upon them. R. F. M.

LACK OF JURISDICTION TO PROCEED WITH A SUIT AGAINST A FOREIGN SOVEREIGN.—The case of *Mason* v. *The Intercolonial Ry. of Canada* (1907), — Mass. —, 83 N. E. Rep. 876, illustrates one of the weaknesses of public ownership of railroads. Plaintiff, being injured in Canada, brought suit by trustee process, substantially a proceeding in rem in Massachusetts. The defendant neglecting to answer, it was disclosed by a friend appointed by the court that the title to defendant road was in the King of England in his right as ruler of Canada, without any intermediary corporation. It was also shown that the road was maintained by appropriations from the general government fund, being directly under the supervision of the Minister of Finance, and that all of its earnings were used to meet purely governmental expenditure. The court thereupon refused jurisdiction on the theory that a sovereign cannot be impleaded in a foreign court without his consent.

The status of the Intercolonial Ry. and its relation to the Dominion government was clearly stated in the case of *Queen, Appellant* v. *McLeod* (8 Canadian Supreme Court 1). The train upon which the plaintiff was riding was thrown from a sharp curve. The evidence showed that for a mile on each side of the curve many of the ties could be kicked to pieces with a boot and that spikes could be picked from the rotten wood with the fingers. A verdict of $36,000 was reversed on the ground that a sovereign could not be sued in the courts of his own country. The decision was undoubtedly in line with the weight of authority. Theoretically and historically the power of the courts is derived from the King, and until something can be created out of nothing there is logic at least in saying that the creator cannot be called to account by the created. (BL. COM. I, p. 242). But the immunity granted a sovereign in the courts of a foreign jurisdiction rests upon other grounds. The absolute authority of the sovereign country over its own territory is admitted, the refusal to implead the foreign sovereign being founded rather on the courtesy of nations, and the practical inability of the court to enforce its decree; the whole situation being graphically stated by Blackstone in the query "Who shall command a King?" (BL. COM. Supra), *The Duke of Brunswick* v. *The King of Hanover*. 6 Beav. 1

The latter reason underlying the international rule finds no application where the proceeding as in the principal case is in the nature of a suit in rem. The very property, the only essential of jurisdiction, is before the court, leaving the only reason for refusal to decree right as to the property, the character of one of the parties.

Under such conditions, and bearing in mind that the exemption in its first instance depends purely upon comity, it is reasonable to expect a modification in the scope of the immunity. "There is," says Chief Justice MARSHALL in the leading case of *The Schooner Exchange* "a manifest distinction between the private property of the person who happens to be a